

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0494, Stephen M. Baldwin, Individually and as Administrator of the Estate of Katie E. Baldwin & a. v. Daniel Sedory & a., the court on March 13, 2007, issued the following order:

The plaintiffs, Stephen M. Baldwin, Individually and as Administrator of the Estate of Katie E. Baldwin, and Rebecca J. Baldwin, appeal an order of the trial court granting the motion for summary judgment filed by the defendants, Daniel Sedory and the University System of New Hampshire. They argue that the trial court erred in determining that their claims were barred by the statute of limitations. See RSA 508:4 (1997). They contend that the discovery rule applied to their claims and they acted with reasonable diligence to determine whether there was a causal connection between Sedory's conduct and Katie Baldwin's death. We affirm.

In reviewing the trial court's grant of summary judgment, we consider the affidavits and all inferences properly drawn from them, in the light most favorable to the non-moving party. Marikar v. Peerless Ins. Co., 151 N.H. 395, 397 (2004). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. *Id.* We review the trial court's application of the law to the facts de novo. *Id.* We note that we have not been provided with a copy of the defendants' motion for summary judgment. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004) (burden of appealing party to provide this court with a record sufficient to decide issues on appeal); see also Sup. Ct. R. 13. Because we discern no dispute concerning the facts relevant to our analysis, we will consider the legal issues raised on the record before us.

RSA 508:4, I, provides: "Except as otherwise provided by law, all personal actions, except actions for slander or libel, may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of."

In this case, the trial court found that defendant Sedory treated Katie for her injury and "for the symptoms that were suggestive of the condition that eventually caused Katie's death." See Keshishian v. CMC Radiologists, 142 N.H. 168, 179 (1997) (where application of discovery rule may require factual

determinations, trial judge rather than jury acts as trier of fact). Based upon those findings and the record before us, we find no error in the trial court's finding that the plaintiffs discovered or could reasonably have discovered the defendants' alleged negligent conduct and its causal connection to Katie's death more than three years prior to the commencement of this action. See Pichowicz v. Watson Ins. Agency, 146 N.H. 166, 168 (2001) (knowledge of possibility of causal connection between harm and alleged negligence, rather than certainty, is all that is required in statute of limitations analysis).

Nor do we find merit in the plaintiffs' argument that because they consulted legal counsel who advised them that they had no cognizable claims against the defendants, they exercised due diligence in discovering the causal connection between the alleged negligence and the injury. See Cass v. Ray, Ex'r, 131 N.H. 550, 554 (1989) (counsel's acts and omissions within scope of his authority are acts and omissions of client).

Affirmed.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**